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19
20 **UNITED STATES DISTRICT COURT**
21 **NORTHERN DISTRICT OF CALIFORNIA**
22 **SAN FRANCISCO DIVISION**

23 ORACLE AMERICA, INC.

24 Plaintiff,

25 v.

26 GOOGLE, INC.

27 Defendant.
28

Case No. CV 10-03561 WHA

**ORACLE’S OPPOSITION TO GOOGLE’S
MOTION TO PRECLUDE TESTIMONY
OF TIMOTHY LINDHOLM**

Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

1 **I. INTRODUCTION**

2 The evidence establishes that Mr. Lindholm, an early member of the Android team at Google,
3 had specific, detailed working knowledge of the '104 patent. Indeed, Mr. Lindholm devoted an entire
4 chapter of *The Java Virtual Machine Specification*, which he wrote, to describing an implementation
5 of that patent. Moreover, in rejecting Google's last attempt to conceal Mr. Lindholm, the Court
6 already held that "Mr. Lindholm's background shows that he was quite knowledgeable about Java
7 and Android technology as separate platforms and any potential crossover between the two platforms,
8 or so a reasonable jury could find. His admission that Google needed a Java license is relevant to the
9 issue of infringement." (Dkt. No. 676 at 2 (emphasis added).) Mr. Lindholm's deep knowledge of
10 Sun's Java virtual machines, including the patents that Sun obtained on them, is also directly relevant
11 to the Phase 2 issue of inducement.

12 Google's motion should be denied.

13 **II. BACKGROUND**

14 Mr. Lindholm worked at Sun Microsystems from 1994 to 2005, where, at the time he left, he
15 held the title Distinguished Engineer. (Lindholm at RT 839:3–8.) At Sun, Mr. Lindholm worked on
16 the original Java team, which was involved in creating the Java platform. (Lindholm at RT 839:9–
17 13.) As Google admits, while he was employed by Sun, Mr. Lindholm co-wrote (with ex-Sun and
18 now-Google employee Frank Yellin), *The Java Virtual Machine Specification*, both first and second
19 editions. (TX 25 (first edition); TX 987 (second edition).) That book is "a definitive source for
20 anyone who wants to know exactly how the Java programming language works." (TX 25 at 14.) In
21 Chapter 9 of the First Edition, Messrs. Lindholm and Yellin described "An Optimization," which
22 specifically notes: "The technique documented in this chapter is covered by U.S. Patent 5,367,685."
23 (TX 25 at 401.) As Google admits, this patent was the predecessor to the '104 patent-in-suit. (Dkt.
24 1077 at 1.) In addition, as a Distinguished Engineer at Sun, Mr. Lindholm oversaw the development
25 of Sun's efforts in the Java ME space. In short, Mr. Lindholm is very knowledgeable about the
26 technology in Java virtual machines, and he knows about the patents that cover them.

27 Immediately after he left Sun and joined Google in July 2005, Mr. Lindholm met with Mr.
28 Rubin about Android's plans to implement a "clean room JVM" for small devices, and Mr. Lindholm

1 began negotiating with his former colleagues at Sun for a “critical” Java license. (Dkt. 331
2 (Lindholm Decl.); TX 140, TX 317.) Although Google has consistently tried to minimize
3 Lindholm’s involvement with Android, his documents tell a different tale. (*See* Dkt. 676 at 2 (finding
4 Lindholm’s “attorney-prepared declaration” disclaiming knowledge of Android to be
5 “unpersuasive”).)

6 In addition to providing strategic advice about Sun’s motivations and bargaining position (*see*
7 TX 3, TX 9, TX 125), Lindholm actually reviewed the Java license that Google considered taking
8 and provided Rubin and others with advice about particular license clauses. (TX 213) Lindholm’s
9 role in Android’s early development also involved technical advice. Lindholm was a “Project
10 Advisor” for Android, and described his “main value” as being a “J2ME runtime generalist and
11 interpreter of the engineering/business/legal ecosystem.” (TX 321, TX 6 at 7) He gave Mr. Rubin
12 technical advice on Sun’s virtual machine implementations for J2ME, including his opinions on the
13 specific Sun technology that might be valuable to Android. (TX 131) Although he now claims to be
14 ignorant of the technical workings of Android, his documents show that he “[g]ot a run through the
15 Android technology” (TX 325) and was one of the Android team members whose participation was
16 “mandatory” for a 2006 meeting in which Sun engineers would “detail their CDC stack to us, what
17 it’s [*sic*] capabilities are, and to get feedback from us (in realtime) about how much work will have to
18 be done to it to get it working for our platform,” and the Android engineers would “share with them
19 an architectural view of our system, especially as it relates to the Java VM.” (TX 212.) In short, Mr.
20 Lindholm was deeply involved in Android from the very beginning.

21 III. ARGUMENT

22 The evidence establishes that an early member of the Android team—Mr. Lindholm—had
23 specific working knowledge of the ’104 patent. This highly relevant fact should not be hidden from
24 the jury. Google’s argument that the prejudicial value of this fact outweighs its probative force is
25 meritless. There is no prejudice. There are only directly relevant facts that Google cannot explain
26 away.

27 First, Mr. Lindholm’s testimony is relevant to direct infringement. The Court has already
28 held that

1 Mr. Lindholm’s background shows that he was quite knowledgeable about Java
2 and Android technology as separate platforms and any potential crossover
3 between the two platforms, or so a reasonable jury could find. His admission that
4 Google needed a Java license is relevant to the issue of infringement.

5 (Dkt. 676 at 2.) The Court’s statement is true not just of Mr. Lindholm’s August 6, 2010 email (TX
6 10), but of the rest of Mr. Lindholm’s words and actions. Mr. Lindholm himself admits that he was
7 involved for “about a year” in the Android project. (Lindholm at RT 868:20-869:1) He had deep
8 working knowledge of the Java technology, including the patents it covered, and understood the
9 Android technology. (TX 325, 212)

10 Throughout this case, Google repeatedly mischaracterized Mr. Lindholm’s role on the
11 Android team in a futile effort to drag him, and his documents, out of view. For example,

Google Claim	Lindholm Documents
<p>12 Mr. Lindholm “never worked on any aspect of 13 Android at all.” 14 15 (Statement by Google counsel, July 21, 2011 16 Discovery Hearing Tr. at 31:13-32:2)</p>	<p>17 TX 2 (Notes of Android GPS meeting attended 18 by Mr. Lindholm, Mr. Rubin, and Google 19 founders Larry Page and Sergey Brin) 20 21 TX 325 (“Got a run through the Android 22 technology”) 23 24 <i>See also</i> TX 3, 6, 9, 10, 125, 131, 212, 213, 321 25 etc.</p>
<p>19 “I don’t believe he attended any negotiating 20 sessions.” 21 22 (Statement by Google counsel, July 21, 2011 23 Discovery Hearing Tr. at 33:14-23)</p>	<p>24 TX 1 at 9 (“Google/Android, with support from 25 Tim Lindholm, negotiates the first OSS J2ME 26 JVM license with Sun”) 27 28 TX 325 (“Two Sun meetings on Android licensing”) TX 140 (“As you might vaguely be aware, I have been helping Andy Rubin with some issues associated with his Android platform. This has mostly taken the form of helping negotiate with my old team at Sun for a critical license.”)</p>

1 Mr. Lindholm “had never reviewed the patents
2 asserted by Oracle in this lawsuit.”
3 (Dkt. 492, Google MIL No. 1, at 2:2)

TX 25 at 401 (The Java Virtual Machine
Specification, (“The technique documented in
this chapter is covered by US Patent
5,367,685.”))

4
5
6 Despite Google’s efforts to pretend that Mr. Lindholm had no meaningful involvement with Android,
7 and had never even *reviewed* (much less written a chapter of a book about) the patents-in-suit, the
8 jury is entitled to draw exactly the inference that the Court previously identified: that he was “quite
9 knowledgeable about Java and Android technology as separate platforms and any potential crossover
10 between the two platforms.” (Dkt. 676 at 2.)

11 Moreover, Google’s insistence that Lindholm was not involved in “designing or coding the
12 Android software” and had no “technical responsibilities” for Android, even if that were true, would
13 not be relevant. Lindholm knew that Sun had a specific patent, that patent aided performance, that
14 patent read on Sun’s Java virtual machine, and the successor to that patent is the patent-in-suit. In
15 addition, Mr. Lindholm knew that Android was implementing a Java virtual machine. (TX 1, at 9.)
16 Mr. Lindholm’s detailed knowledge of the specific Java and Android technology and his admissions
17 in 2006 that a license was “critical,” are relevant to a finding of infringement. Google cannot exclude
18 that relevant evidence by relitigating an issue that the Court has already decided against it.

19 Second, Google is simply wrong that the “difference” in claim language between the ’104 and
20 ’685 has any bearing on infringement, or on the relevance of Mr. Lindholm’s knowledge of the ’685.
21 Google observes only that the claims “differ,” but does not discuss which direction the differences
22 cut. (Dkt. 1077 at 2, 3.) That is because Google itself has insisted that every claim of the ’104 is
23 broader than the claims in the ’685. (*See* Dkt. No. 311 at 2 (précis “All the claims of the ’104 patent
24 are broader than the claims of the ’685 patent.”).) As a result, if a method or apparatus is covered by
25 the ’685, Google has taken the position that the same method or apparatus would be also necessarily
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27
28

1 covered by the '104.¹ This sort of issue is precisely what testimony at trial should sort out. Mr.
2 Lindholm's knowledge of the '685 patent is therefore unquestionably relevant, and not misleading.

3 Third, in addition to its relevance for direct infringement, Mr. Lindholm's knowledge of the
4 '104 patent is relevant to Oracle's claims of inducing infringement. Oracle need not show that
5 Google had knowledge of the patents-in-suit by number, but inducement under 35 U.S.C. § 271(b)
6 nonetheless "requires knowledge that the induced acts constitute patent infringement." *Global-Tech*
7 *Appliances, Inc. v. SEB S.A.*, 131 S. Ct. 2060, 2068 (2011). Mr. Lindholm's knowledge of the
8 predecessor to the '104—which he identified specifically and described in detail in a book he
9 published—is unquestionably relevant to an essential element of one of Oracle's claims.

10 Fourth, Google is simply incorrect that the standard for inducement would require Oracle to
11 show that Google was "made aware of the patents-in-suit" by Mr. Lindholm. As the Supreme Court
12 held in *Global-Tech*, willful blindness suffices. *Global-Tech*, 131 S. Ct. at 2069. Mr. Lindholm
13 knew that (at least one) patent existed on technology that Android was building. He likely knew that
14 there were hundreds more. Mr. Lindholm was a member of the Android team, advising Mr. Rubin on
15 technology to incorporate into Android's JVM. The jury should be entitled to draw an inference from
16 the admitted failure by Mr. Rubin, Mr. Lindholm, and the rest of the Android team to conduct any
17 further inquiry at all that Google took deliberate actions to avoid learning of any patents that it was
18 likely to infringe. *Id.* at 2071 (describing standard for willful blindness in the context of
19 inducement); *see also ePlus Inc. v. Lawson Software, Inc.*, Civil No. 3:09-cv-620, 2011 WL 3584313,
20 at *4–5 (E.D. Va. Aug. 11, 2011) (instructing jury that "[k]nowledge of the patent may be established
21 by a finding that Lawson had actual knowledge of the patent or that Lawson deliberately disregarded
22 a known risk that ePlus had a protective patent.").

23 Fifth, Mr. Lindholm's actual knowledge of the predecessor patent to the '104 is nothing like
24 Mr. Schmidt's prior testimony before Congress. Mr. Schmidt's outdated articulation of a policy
25 position on what Sun then advocated the law ought to be has no bearing on any claim or fact to be
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27 ¹ Google's request to file a summary judgment motion for invalidity based on the broadening re-issue
28 was denied (Dkt. 327), and Google no longer asserts any invalidity defense.

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decided by the jury. In contrast, Mr. Lindholm’s knowledge goes directly to essential elements of Oracle’s infringement and inducement claims—specific knowledge of a patent by an expert on the technology who was later employed by Google and worked in an advisory role on Android. Google’s argument is simply that both pieces of evidence are more than ten years old. By Google’s absurd logic, the ’104 patent itself should be excluded, as it was first issued in 1994.

IV. CONCLUSION

Mr. Lindholm’s testimony is relevant to Phase 2, notwithstanding the fact that it may also be relevant to willful infringement in Phase 3. The probative value of Mr. Lindholm’s testimony is substantial; its prejudicial effect is nil. Google’s motion to preclude Mr. Lindholm’s testimony should be denied.

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